

CHICAGO AND



TRANSPORTATION COMPANY

SEP 1 12 54 PM '78

I.C.C.  
FEE OPERATION BR.

RECORDATION NO. 9638-A Filed & Recorded

SEP 1 1978 - 1 05 PM

INTERSTATE COMMERCE COMMISSION

August 31, 1978

BERNARD J. ALLEN  
DIANE KOHLER-RAUSCH  
JOAN A. SCHRAMM  
ASSISTANT SECRETARIES

Re: File No. A-10723

RECORDATION NO. 9638-B Filed & Recorded

SEP 1 1978 - 1 05 PM

8-244A076

Date SEP 1 1978

Fee \$ 50 + 10

Interstate Commerce Commission  
Washington, D. C. 20423

ICC Washington, D. C.

Attention: Acting Secretary

Gentlemen:

Please refer to your Number 9638 in which a Lease Agreement covering a Plasser Model RM 76 U Ballast Undercutter and Cleaner was filed on August 9, 1978 at 11:15 a.m. We would like the enclosed documents to be filed under the 9638 number, with A and B designations.

Enclosed for recordation pursuant to Section 20c of the Interstate Commerce Act are counterparts of the following:

(1) Agreement and Indenture (Security Agreement), dated as of September 1, 1978, between Great American Life Insurance Company (Owner) and Great American Insurance Company (Secured Party).

(2) Assignment of Lease, dated as of September 1, 1978, between Great American Life Insurance Company, Owner/Lessor and Great American Insurance Company, Secured Party/Assignee.

The addresses of the parties to the aforementioned agreements are:

Great American Life Insurance Company  
6310 San Vincente Boulevard  
Los Angeles, California 90058

Great American Insurance Company  
c/o Robert C. Lintz  
One East Fourth Street  
Cincinnati, Ohio 45202

Interstate Commerce Commission  
August 31, 1978  
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The equipment covered by the aforementioned documents consists of one Plasser Model RM 7611 Ballast Undercutter and Cleaner.

Enclosed is our check for \$60.00 to cover your recording fee. Please return Counterparts Nos. 1 to 4, inclusive, showing your recordation data.

Very truly yours,

*Diane Kohler-Rausch*  
Diane Kohler-Rausch  
Assistant Secretary

Enclosures

RECORDATION NO. *9638-B*

Filed &amp; Recorded

SEP 1 1978 - 1 25 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE

ASSIGNMENT OF LEASE, as of September 1, 1978, between GREAT AMERICAN LIFE INSURANCE COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey (the "Owner") and GREAT AMERICAN INSURANCE COMPANY, a corporation duly organized and existing under the laws of the State of Ohio (the "Assignee").

## W I T N E S S E T H :

WHEREAS, the Owner and Chicago and Northwestern Transportation Company ("Lessee") have entered into a Purchase Order Assignment dated as of August 7, 1978, ("Purchase Order Assignment") providing for the sale to the Owner of certain railroad equipment described therein and in Annexes thereto as are delivered to and accepted and settled for by the Owner thereunder; and

WHEREAS, the Owner and the Lessee have entered into an Equipment Lease dated as of August 1, 1978 (together with any security interest granted by the Lessee to secure its obligations thereunder, the "Lease") providing for the leasing by the Owner to the Lessee of the Units; and

WHEREAS, the Owner and Assignee have entered into a Loan Agreement (the "Loan Agreement") and an Agreement and Indenture (the "Indenture"), both dated as of September 1, 1978 whereby the Owner will borrow from Assignee part of the Purchase Price of the Units and whereby the borrowings made pursuant thereto shall be secured as provided in the Indenture; and

WHEREAS, in compliance with the provisions of the Indenture and in order to provide for the security for the indebtedness of the Owner to Assignee pursuant to the Loan Agreement and Indenture, and as inducement to Assignee to make loans to the Owner pursuant to the Loan Agreement and Indenture, the Owner has agreed to assign the Assignee for security purposes its rights in, to and under the Lease;

NOW, THEREFORE, to secure the due and punctual payment of the Note, together with accrued interest thereon, and all other amounts from time to time payable by the Owner under the Indenture, under the Lease and under this Assignment,

and to secure performance of all obligations and covenants of the Owner under this Assignment, the Parties hereby agree as follows:

1. The Owner hereby assigns, transfers, conveys and sets over to the Assignee and grants to the Assignee a security interest in the below described property (collectively the "Collateral"):

(a) the Lease and all of Owner's estate, right, title, interest, claim and demand as Lessor in, to and under the Lease, (including all renewals or extensions of the term of the Lease) together with all rights, powers, privileges, options and other benefits of Owner as Lessor under the Lease, including, without limitation, the immediate and continuing right to receive and collect all rents, income revenues, issues, profits, insurance proceeds, condemnation awards, and other payments, tenders and security for or with respect to the Equipment now or hereafter payable to or receivable by the Lessor under the Lease pursuant thereto, including, without limitation, payments of Stipulated Loss Value, or otherwise, and whether payable prior or subsequent to the maturity date of the Note; and the right to make all advances, waivers and agreements, to require the lessee to pay rental, as provided in the Lease, and to perform, in the name and on behalf of Owner, as agent and attorney-in-fact with respect to any such payment, to give and receive duplicate copies of all notices and other instruments or communications, to take such action upon the occurrence of an Event of Default under the Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or by law, and to do any and all other things whatsoever which Owner or any Lessor of the Equipment is or may be entitled to do under the Lease.

(b) the cash and non-cash proceeds of all of the properties described in (a) above;

provided, however, that it is expressly agreed that anything herein to the contrary notwithstanding, the Owner shall remain liable under the Lease to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms thereof and that the Assignee or any

of its successors or assigns shall have no obligation or liability under the Lease, by reason of or arising out of this Assignment nor shall the Assignee, its successors or assigns be required or obligated in any manner to perform or fulfill any obligations of the Owner under or pursuant thereto or to make any payment or to make any inquiry as to the nature or sufficiency of any payment received by it or to present or file any claim, or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled hereunder at any time or times; provided, further, except as otherwise provided in the Note and the Indenture, this Assignment of Lease shall be without recourse to the Owner.

2. Owner hereby constitutes the Assignee its true and lawful attorney, irrevocably, with full power (in the name of Owner or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due and to become due from the Lessee under or arising out of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Assignee may deem to be necessary or advisable.

3. Owner hereby designates the Assignee as recipient of, and hereby irrevocably directs the Lessee to deliver or remit directly to the Assignee at One East Fourth Street, Cincinnati, Ohio, 45202, Attention: Robert C. Lintz or at such other address as the Assignee may from time to time designate, copies of all notices and other instruments or communications required or permitted to be given or made by the Lessee pursuant to the Lease (it being understood by the Lessee that duplicate copies of such notices and other instruments or communications are also to be sent to Owner). All rentals or payments including, without limitation, payments of Stipulated Loss Value, liquidated damages, and other payments, tenders and security now or hereafter due and payable to or receivable by the Lessor under the Lease shall be sent to Assignee's Account No. 0431-627 at the Provident Bank, Cincinnati, Ohio in immediately available funds. Owner agrees that promptly on receipt thereof, it will transfer to the Assignee any and all moneys from time to time received by it, constituting part of the Collateral, for distribution by the Assignee pursuant to the Indenture and this Assignment of Lease. So long as no Event of Default, or event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default, shall have occurred, the Assignee shall promptly disburse any indemnification or similar payments received by it pursuant to Sections

7 or 19 of the Lease to the person entitled to receipt thereof under the Lease; provided, however, that if an Event of Default shall have occurred and be continuing or an event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default, shall have occurred, such payments shall constitute part of the Collateral and shall be held by the Assignee hereunder for application pursuant to this Assignment and the Indenture. Owner hereby agrees to send to the Assignee, by prepaid United States registered or certified mail, return receipt requested, copies of all notices and other instruments or communications required or permitted to be given by the Lessor under the Lease pursuant thereto.

4. Owner represents and warrants that it has not executed any assignment of the subject matter of the assignment made hereby to the Assignee, other than this Assignment. Owner represents and warrants that its principal place of business is at 6310 San Vincente Boulevard, Los Angeles, California, 90058.

5. Owner agrees that the assignment made hereby and the designation and direction to the Lessee hereinabove set forth are irrevocable, and that Owner will not, while said assignment is in effect, accept any payment from the Lessee, settle or compromise or release any claim against the Lessee arising under the Lease, or submit or consent to the submission to arbitration of any dispute, difference or other matter arising under or in respect of the Lease or the foregoing assignment or to take any action as Lessor under the Lease or otherwise which is inconsistent with said assignment, or make any other assignment, designation or direction of the subject matter hereof, and that any such assignment, designation or direction shall be void. Owner will from time to time, upon request of the Assignee, execute all instruments of further assurance and all such supplemental instruments as the Assignee may reasonably request.

6. Owner agrees that it will not, except as permitted or required by the Lease, enter into any agreement subordinating, amending, supplementing, hypothecating or terminating the Lease (or purporting so to do) without the Assignee's prior written consent thereto, and that any attempted subordination, amendment, supplement, hypothecation or termination without such consent shall be void unless so permitted or

required. Owner further agrees that in its capacity as Lessor under the Lease, it shall not without the prior written consent of the Assignee, give any consent or approval required under the Lease.

7. So long as this Assignment remains in effect, the Owner shall not assign, pledge, or otherwise encumber the whole or any part of the right, title, and interest hereby assigned to anyone other than the Assignee, its successors and assigns, and it shall not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of said right, title or interest on this Assignment.

8. Owner shall, from time to time, at its own expense, take all action reasonably requested by the Assignee to establish, preserve, protect and perfect the rights of the Owner or the Assignee created by the Lease and this Assignment, including, without limitation, the execution, filing and recording, in such offices as shall be required or appropriate under applicable law, of any financing statement, security agreement, continuation statement or other instrument necessary to perfect Assignee's interest hereunder, and as Assignee may further reasonably request. Owner further represents and warrants that, subject to the due and timely filing for recording in accordance with the Interstate Commerce Act, as amended, and in view of the filing of the financing statement or statements required by Assignee as security for the Note, this Assignment constitutes a legal, valid, and binding Assignment, enforceable against the Owner, and of all of the Owner's right, title and interest in, to and under the Lease.

9. This Assignment and the security interest granted by this Assignment shall terminate when the indebtedness hereby secured and all other obligations of the Owner under this Assignment shall be fully paid and performed. Upon termination of this Assignment, as aforesaid, the Assignee shall execute and deliver to Owner, at Owner's expense, such instruments of release and termination as shall be reasonably requested by the Owner.

10. This Assignment is being executed concurrently with the Indenture and the Note, and an Event of Default hereunder shall constitute an Event of Default under the Indenture and entitle Assignee to all of the rights, privileges, and remedies thereunder.

11. Owner agrees that until an Event of Default shall occur and be continuing under the Note, all payments received by Assignee under this Assignment shall be forthwith applied to the payment of principal and interest then due and payable under the Note and the excess, if any, shall be promptly remitted to Owner. If an Event of Default shall occur and be continuing under the Note, all payments received by Assignee under this Assignment shall be forthwith applied as provided for in the Indenture.

12. Except as set forth in the Indenture, this Assignment is without recourse to the Owner. This Assignment shall be binding upon, inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto. Neither this Assignment nor any provision hereof may be amended, modified, waived, discharged or terminated orally, but only by an instrument signed by the party against whom enforcement of such amendment, modification, waiver, discharge or termination is sought. If any provision of this Assignment, or any application thereof shall be invalid or unenforceable, the remainder of this Assignment and any other application of such provision shall not be affected thereby. This Assignment may be executed in any number of counterparts, each of which shall be an original, and such counterparts shall together constitute but one and the same instrument. This Assignment shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of Ohio, including all matters of construction, validity and performance. All notices, demands and other communications between the parties hereto may be sent by mail, postage prepaid, to the addresses of the parties set forth in Section 5.1 of the Loan Agreement, and as to Lessee as set forth in Section 23 of the Lease.

IN WITNESS WHEREOF, Owner and Assignee have each caused this Assignment to be duly executed and delivered in its name and behalf, on the day and year first above written.

ATTEST:

GREAT AMERICAN LIFE INSURANCE  
COMPANY ("Owner")



BY:



[Corporate Seal]




ATTEST:

GREAT AMERICAN INSURANCE  
COMPANY ("Assignee")



[Corporate Seal]

BY: 

CONSENT

Reference is made to a Lease of Railroad Equipment ("Lease") between Great American Life Insurance Company ("GALIC") and Chicago and North Western Transportation Company ("Chicago & NW"), dated as of August 1, 1978 and an Agreement and Indenture ("Agreement and Indenture") between Great American Life Insurance Company (Owner) and Great American Insurance Company ("GAIC") (Secured Party), dated as of September 1, 1978.

Chicago & NW hereby (a) acknowledges and consents to the assignment by GALIC to GAIC, pursuant to an Assignment of Lease, dated as of September 1, 1978, of (i) all of GALIC's estate, right, title, interest, claim and demand in, to and under the Lease, and (ii) the rental payments due after September 1, 1978 under the Lease and all other moneys, if any, which may from time to time be payable to or receivable by GALIC under any of the provisions of the Lease (all such amounts hereinafter being referred to as the "Moneys"), and (b) agrees that it will not enter into any agreement (1) amending, (2) supplementing, or (3) terminating the Lease without GAIC's prior written consent thereto, which as to (1) and (2) shall not be unreasonably withheld or delayed, and that any attempted amendment, supplement or termination without such consent shall be void as to GAIC.

Chicago & NW agrees to (i) remit and deliver all Moneys directly to GAIC, at the account of GAIC at the Provident Bank, Account #0431-627, without abatement, reduction, counterclaim or offset as stipulated in Section 4 of the Lease; and (ii) deliver copies of all notices and other communications given or made by Chicago & NW pursuant to the Lease to GAIC, One East Fourth Street, Cincinnati, Ohio, Attention: Robert C. Lintz.

Chicago & NW acknowledges and agrees that GAIC or any of its successors and assigns shall have no obligation or liability under the Lease by reason of or arising out of the

Agreement and Indenture, and shall not be required or obligated to perform or fulfill any obligations of GALIC under or pursuant to the Lease.

This Consent is given subject to the rights of Chicago & NW to the quiet and peaceful possession of the Equipment described in Annex A to the Lease and to the unrestricted use of the Equipment for its intended purpose under the terms of the Lease so long as Chicago & NW, as Lessee, shall not be in default of any of the provisions of the Lease, and shall not be in default of its obligations hereunder to make payments of all required Moneys to GAIC as assignee of the interests of GALIC under the Lease.

IN WITNESS WHEREOF, Chicago & NW has executed this Consent as of the 1st day of September, 1978.

WITNESSES:

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY

Lois E. Jenkins  
Leah Chuday

BY:

JM Butte